IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10011 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

MAHMEDFARUK A DABBAWALA

Appearance:

1. Special Civil Application No. 10011 of 1999

MR HARDIK C RAWAL for Petitioner No. 1

PARTY-IN-PERSON for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 08/07/2004

ORAL JUDGEMENT

The petitioner - Gujarat State Road Transport Corporation is challenging the order of the Industrial

Tribunal dated 28th June, 1999 whereby the Approval Application was not granted. Mr. Hardik Rawal for the petitioner Corporation has submitted that, though it was specifically prayed before the Tribunal, if the Tribunal comes to the conclusion that the departmental inquiry held is illegal or defective, then the petitioner Corporation may be given chance to lead evidence before the Tribunal, however, no such opportunity was given to the petitioner Corporation. Mr. Rawal, in order to substantiate his contention has relied upon the decision of the Apex Court rendered in the case of KARNATAKA STATE ROAD TRANSPORT CORPN. Vs. LAKSHMIDEVAMMA (SMT) AND ANOTHER, (2001) 5 SCC, 433, more particularly paragraph 8 & 9. In that view of the matter, this matter is required to be remanded back to the Tribunal.

1.2 Mr. Rawal has further submitted that the challenge is only qua the findings of the Industrial Tribunal that the inquiry is not conducted properly, and the other findings are not challenged by the petitioner Corporation and the petitioner is restricting their petition qua the findings of the Industrial Tribunal which are against the petitioner Corporation.

2.1 Mr. Mohmedfaruk Dabbawala, respondent party-in-person has submitted that inspite of the order the respondent has not been paid any salary as required under 17-B of the I.D. Act. To this contention, Mr. Rawal has submitted that the petitioner is gainfully employed by doing miscellaneous work and is earning about Rs.4,500-00 per month, and is also appearing before the Labour Court regularly and in that view of the matter no order is required to be passed at this stage; and ultimately if the respondent workman is entitled to get any benefit he could approach the appropriate authority after the proceedings are decided by the Industrial Court.

3.1 The contention of Mr. Rawal is supported by the judgment of the Tribunal in paragraph No.1 itself. Though learned Tribunal has mentioned about the specific contention raised by the petitioner Corporation, no such opportunity was given to the petitioner Corporation. In this view of the matter observations made in paragraph No. 8 and 9 of the Apex Court in case of Karnataka State Road Transport Corpn. (supra) would be applicable in the present case, which reads as under:-

> "8. Before we proceed to examine this question any further, it will be useful to bear in mind that the right of a management to lead

evidence before the Labour Court or the Industrial Tribunal in justification of its decision under consideration by such tribunal or court is not a statutory right. This is actually a procedure laid down by this Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the management and the workman. The genesis of this procedure can be traced by noticing the following observations of this Court in Workmen v. Motipur Sugar Factory (P) Ltd. (SCR pp. 597G-H and 598A)

" If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the Industrial Tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry given. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits, the employee has the advantage of having the merits of his case being considered by the Tribunal for itself an that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the Tribunal may give an opportunity to the employer to prove his case and in doing so the Tribunal tries the merits itself."

9. Bearing in mind the above observations if we examine the various decisions of this Court on this question it is seen that in all the judgments this Court have agreed on the conferment of this right on the management but there seem to be some differences of opinion in regard to the timings of making such application. While some judgments hold that such a right can be availed of by the management at any stage of

> the proceedings right up to the stage of pronouncement of the order of the original application filed either under Section 10 or Section 33(2) (b) of the Industrial Disputes Act, some other judgments hold that the said right can be invoked only at the threshold. "

3.2 Since the matter is required to be remanded to the Industrial Tribunal to decide afresh, I am not giving my view on merits in this petition.

3.3 The petition is accordingly allowed. Matter is ordered to be remanded back to the Industrial Tribunal for deciding the Approval Application afresh by the Industrial Tribunal by allowing the petitioner Corporation to conduct the inquiry before the Tribunal properly, after giving opportunity of hearing to both the sides. Rule is made absolute to the aforesaid extent. No costs.

Dt: 8-7-2004 (K.S. Jhaveri, J)

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